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ELIMINATION OF RACISM AND RACIAL DISCRIMINATION

Implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination

Report of the Secretary-General

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I. INTRODUCTION

1. The present report was prepared in pursuance of paragraphs 16 and 17 of General Assembly resolution 49/146 of 23 December 1994 with a view to supplementing the report of the Secretary-General to the Economic and Social Council at its substantive session of 1996 (E/1996/83).

II. IMPLEMENTATION OF THE PROGRAMME OF ACTION WITHIN THE UNITED NATIONS SYSTEM

A. Economic and Social Council

2. At its substantive session of 1996, the Economic and Social Council discussed the implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (1993-2003), contained in the annex to General Assembly resolution 49/146, and approved the request of the Commission on Human Rights to the Secretary-General:

(a) To publish and distribute as soon as possible the model legislation on racism and racial discrimination for the guidance of Governments in the enactment of further legislation against racial discrimination;

(b) To include the activities for the Third Decade not implemented in the 1994-1995 biennial programme in the future programme for the Decade and to provide the resources necessary for it;

(c) To ensure that the necessary financial resources are provided for the implementation of the activities for the Third Decade during the biennium 1996-1997.

3. Further, the Council, on the recommendation of the Commission, requested the Secretary-General to take the necessary measures to transmit to the General Assembly at its fifty-first session the results of his consultations with Member States and intergovernmental and non-governmental organizations on the possibility of holding a world conference to combat racism, racial discrimination, xenophobia and related contemporary forms of intolerance.

B. Joint meeting of the Committee on the Elimination of Racial Discrimination and the Subcommission on Prevention of Discrimination and Protection of Minorities

4. A joint meeting of the Bureaux of the Committee on the Elimination of Racial Discrimination and the Subcommission on Prevention of Discrimination and Protection of Minorities was held at Geneva on 15 August 1996.

5. At the meeting, the Committee and the Subcommission agreed to undertake a joint study of article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination. Article 7 of the Convention, the text of which is contained in the annex to General Assembly resolution 2106 (XX) of

21 December 1965, refers to measures which States Parties agree to adopt in the fields of teaching, education, culture and information with a view to combating racial discrimination.

6. Two members of each body were designated to prepare a working paper which would explain the objectives and purpose of the study and would be discussed at the next meeting of the two bodies in August 1997.

C. Seminar to assess the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination

7. In accordance with General Assembly resolution 48/91 of 20 December 1993, which proclaimed the Third Decade to Combat Racism and Racial Discrimination, the United Nations High Commissioner for Human Rights/Centre for Human Rights organized a seminar to assess the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, with particular reference to articles 4 and 6. The seminar was held at Geneva from 9 to 13 September 1996.

8. The agenda of the seminar included the following topics:

(a) Global assessment of the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination;

(b) Implementation of articles 4 and 6 of the Convention: limits and perspectives;

(c) Racist and xenophobic propaganda through computer and electronic networks: measures to be taken at the national and international levels;

(d) Effects of reservations to article 4 on the fight against racism and racial discrimination;

(e) Effectiveness of recourse procedures available to victims of racism and racial discrimination;

(f) Conclusions and recommendations.

9. The United Nations High Commissioner for Human Rights opened the seminar with an introductory statement in which he expressed concern about the resurgence of new forms of racism, racial discrimination and hatred and referred in particular to the injustice suffered by immigrants, refugees and ethnic minorities. He mentioned the burning and destruction of refugee camps, churches, mosques and synagogues and the profanation of cemeteries which had occurred in recent years.

10. The High Commissioner emphasized that ethnic or nationalist hatred has in common with racism the propagation of ideas or theories of the superiority of one race or group of persons over others. He mentioned, specifically, "ethnic

cleansing" as the manifestation of such propaganda and policies and the recent genocide in Rwanda as exemplifying ethnic hatred.

11. The purpose of the seminar was to consider the obstacles to the effective implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and to propose solutions. Referring particularly to article 4, participants discussed the difficulties which prevent the adoption of measures aimed at the elimination of all forms of incitement to racial hatred and discrimination and organizations involved in those activities. Under article 6, they considered the effectiveness of legislation and recourse procedures available to victims of racism and racial discrimination.

12. The main conclusions of the seminar concerned the mass media, the Internet and education. Seminar participants noted that the mass media can contribute to the dissemination of racist ideas and incitement to acts of violence. The seminar therefore encouraged the mass media to promote ideas of tolerance and understanding among different populations, inter alia, on the basis of professional ethics.

13. With regard to the Internet, the seminar suggested that a further seminar be held by the United Nations High Commissioner for Human Rights/Centre for Human Rights in cooperation with Internet service providers to discuss the question of racist information on the Internet.

14. The seminar strongly underlined the importance of education in preventing and eradicating racism and racial discrimination and creating awareness of human rights principles, particularly among young people, and it recommended to States parties that they take measures in that regard.

15. The seminar recognized that it is vital that States Members of the United Nations promote awareness of the threat posed to the stability of national and international order by the propagation of ethnic hatred, ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, and by racist propaganda and activities.

16. The seminar, in line with General recommendation XV (42) on article 4 of the Convention, adopted by the Committee on the Elimination of Racial Discrimination on 17 March 1993, 1/ considered that prohibition of the dissemination of ideas based on racial superiority or racial hatred can be a lawful restriction to the right to freedom of opinion, expression and association as set forth in the Universal Declaration of Human Rights and in article 5 of the Convention.

17. The seminar urged States parties to provide more effective support to and assure greater cooperation with the Committee on the Elimination of Racial Discrimination to enable it to better discharge its functions, and urged them to comply with their reporting duties under the Convention.

18. The seminar commended the non-governmental organizations for their action against racism and racial discrimination and for their continuous support and assistance to the victims of racism and racial discrimination. States were

encouraged to take into account the views of non-governmental organizations when seeking solutions to human rights problems.

III. INFORMATION RECEIVED FROM GOVERNMENTS

GREECE

[Original: English]

[23 May 1996]

19. The Greek Ministry of Justice reported that the Greek Constitution and legislation fully safeguard both equality in the enjoyment of fundamental individual and social rights and freedoms for all citizens irrespective of race, colour, religion and ethnic or national origin (art. 5), and freedom of religious conscience.

20. In addition to the constitutional protection of individual and social rights and freedoms, Greece has signed and sanctioned virtually all international conventions on human rights and on the elimination of racial discrimination, in particular:

- the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights);
- the Convention on the Prevention and Punishment of the Crime of Genocide;
- the International Convention on the Elimination of All Forms of Racial Discrimination;
- the European Social Charter.

21. Those international conventions constitute internal law as of the time they are sanctioned, are applicable ex officio by the courts and by all public services and have increased validity pursuant to paragraph 1 of article 28 of the Constitution, which stipulates that: "The generally acknowledged rules of international law, as well as international conventions as of the time they are sanctioned by law and become operative according to the conditions therein, shall be an integral part of domestic Greek law and shall prevail over any contrary provisions of the law. The rules of international law and international conventions shall be applicable to aliens only under the condition of reciprocity."

22. Consequently, all persons falling within the jurisdiction of the Greek courts, whether they are Greeks or foreigners, are protected by these provisions of both domestic and international law and may seek judicial redress before the appropriate judicial authorities in case of violation of these provisions.

23. In case of violation of these provisions by State organs in the course of the exercise of their duties, both the State organs and the State itself are

held accountable. State organs shall be subject to disciplinary responsibility, criminal liability not to be excluded under the provisions in force. Civil liability is borne in principle by the State. The application of the provisions concerning civil liability of the State does not depend on the existence of culpability (malice or negligence) of the organ that has committed the unlawful and damaging act, omission or material action.

24. Further, at the level of common legislation, article 4 of the Civil Code stipulates that the alien shall enjoy the same civil rights as the national, while in article 192 of the Penal Code, the crime of "incitement of citizens to intolerance" is provided for, according to which whoever publicly by any means causes or incites citizens to commit acts of violence upon each other and to discord among them and in that way disturbs the common peace shall be punished by imprisonment for not more than two years, unless a more severe punishment is imposed by another provision. The protection accorded by the provisions of this article shall be further extended to racial groups or groups of citizens associated with each other by common beliefs or views, beyond religious or political ones.

25. Law 1975 of 1991 has regulated the issues of entry-exit, stay, work, expulsion of foreigners and the procedure relating to the recognition of refugees. The provisions of this law are within the framework of respect for the international obligations assumed by Greece.

26. It should also be mentioned that Greece participated in the joint action programme of the European Union concerning racism and xenophobia.

27. Finally, the Greek Ministry of Justice reported that Greece is at the disposal of the Special Rapporteur of the Commission on Human Rights for cooperation in matters relating to contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

LUXEMBOURG

[Original: French]

[30 May 1996]

28. The Government of Luxembourg reported that numerous motions voted on in the Chamber of Deputies in recent years show that parliamentarians react at the slightest warning of violence or racial, ethnic, anti-Semitic or xenophobic harassment that might jeopardize good relations between nationals of Luxembourg and foreigners.

29. The foremost example of this attitude was the adoption of a framework law on the integration of foreigners in Luxembourg, promulgated on 27 July 1993. This law contains:

(a) A penal component, prohibiting any racial, ethnic or religious discrimination against an individual or community and strengthening the

penalties to be handed down on conviction for racist offences by adding deprivation of civil rights for 5 to 10 years;

(b) A social component which, in addition to arrangements for reception, training, information and psychosocial guidance, lays down regulations for the approval and financing of temporary accommodation such as shelters and reception centres;

(c) An institutional component, introducing a network of structures for decision-making, consultation and coordination, involving the Government, through the inter-ministerial committee coordinating policy relating to foreigners and the Aliens' Department; the communes, through the communal consultative commissions for foreigners; and society at large, together with the Government, through the National Council for Foreigners.

30. The National Council for Foreigners was elected in July 1995 and officially inaugurated on 18 September 1995. It has been consulted by the legislature, inter alia, as part of the procedure for adopting the bill on forms of participation in municipal elections by non-Luxembourg nationals of European Union countries and in connection with the bill on the procedure for examining requests for asylum.

31. After ratifying the International Convention on the Elimination of All Forms of Racial Discrimination, the Government took legislative measures to improve implementation of the Convention at the national level.

32. In 1980 two new articles, articles 454 and 455, were added to the Penal Code to lay down punishment for various types of racist practices. Article 454 penalizes refusal to offer a service to a person or community for racial reasons, discrimination against a person or community in the offering of a service and the publicizing of an intention to practice such discrimination. Article 455 penalizes incitement to discriminatory acts or racial hatred or violence and membership in an organization that practises incitement to discriminatory acts or racial hatred or violence.

33. The prison terms laid down in articles 454 and 455 of the Penal Code have been strengthened by a new article, 456, introduced by article 4 of the Act of 27 July 1993 "concerning the integration of foreigners in the Grand Duchy of Luxembourg and social welfare for foreigners", which deprives persons convicted of any of the racist offences laid down in the Penal Code of their civil rights for 5 to 10 years.

34. A special rule formerly existed for non-profit-making associations; article 26 of the Act of 21 April 1928 on non-profit-making associations and State-approved establishments stipulated that if three fifths of an association's members were not of Luxembourg nationality, the association could not obtain legal personality with regard to third persons without a dispensation from the Government on approval by the Council of State. A law dated 4 March 1994 repealed this provision, which was perceived as discriminatory.

35. Since the March 1994 amendment to the law on non-profit-making associations, there have no longer been any limitations on foreigners of all

nationalities using their constitutional rights to form associations and express their opinions as far as existing legislation permits.

36. The use of languages (the Luxembourg language for oral communication, French and German for written communication) and the traditional methods for learning to read and write (based on German) are a definite scholastic handicap for a number of young foreigners.

37. In order to cope with foreign pupils' difficulties in learning German, provision is made for external differentiation. To overcome the risk of segregation that approach involves, the school authorities have also organized opportunities for internal differentiation and made appropriate instruments available to teachers.

38. Comprehensive courses in the mother tongue (Portuguese, Italian) have also been established for foreign pupils. Arrangements are made for such courses in places where there are a sufficient number of pupils and an explicit demand on the part of parents who have been duly informed of the advantages of this system.

39. Whether they are used in teaching languages, ethnic issues or religion, programmes and textbooks contain a large number of teaching blocks and texts dealing with the problems of discrimination, racism and xenophobia, aimed at fostering tolerance.

40. An important component of the penalization of racism and xenophobia is the preparation of the police force for this task. Appropriate basic and refresher training should enable police officers better to identify offences, handle intercommunity tensions and avoid errors.

41. The new police and gendarmerie schools attach great importance to psychological training and to raising students' awareness of human rights problems. Refresher training for the police force, in particular the examination for advancement, also includes courses on the anti-xenophobia legislation and how to deal with foreigners.

42. In 1992 the Government granted 2.5 million Luxembourg francs to the International League Against Racism and Anti-Semitism, an organization under the high patronage of the Crown Prince, who allocated the money for an extensive poster campaign against racism and xenophobia.

43. Similar campaigns were organized in 1995 as part of a youth campaign against racism, initiated by the Council of Europe and various organizations working on behalf of foreigners. Some of the posters calling for tolerance and vigilance against racism were distributed virtually nationwide.

KUWAIT

[Original: Arabic]

[23 August 1996]

44. In its reply to a note of 15 March 1996 from the Secretary-General, the Government of the State of Kuwait once again welcomed resolution 50/136 concerning the Third Decade to Combat Racism and Racial Discrimination, which was adopted by the General Assembly on 21 December 1995.

45. With regard to paragraph 3 of that resolution, the State of Kuwait wishes to reaffirm its full cooperation with the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

46. Kuwait was one of the first States to ratify the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted in 1965. One form of the State of Kuwait's cooperation consists of its eagerness to provide the Committee on the Elimination of Racial Discrimination, established under the terms of the Convention, with Kuwait's periodic reports on implementation of the provisions of the Convention. Its twelfth periodic report, submitted to the Committee in 1993, was the most recent.

47. It should be noted that, although Kuwait has not acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, under the labour legislation in force workers residing in Kuwaiti territory enjoy full legal protection and their legal and financial rights are guaranteed.

48. Kuwait has taken a number of legislative and practical measures on numerous issues, such as questions concerning nationality, persons residing in the country illegally, women's rights and domestic servants.

49. Decree No. 58 of 1996 provided for the establishment of an executive committee on persons residing in the country illegally, which was duly formed under the chairmanship of the Minister of the Interior and is responsible, inter alia, for taking executive measures to regulate the status of illegal residents in accordance with the general directives, principles, guidelines, criteria and decisions adopted by the Council of Ministers in this connection, with due regard for the requirements of the public interest and the regulations in force. Shaikh Ali al-Sabah, the Minister of the Interior, announced that the Executive Committee would complete its work during the next four months.

50. It is noteworthy that Kuwaiti women are on an equal footing with men in the enjoyment of the rights guaranteed to men in the Constitution, including the right to education and work. Kuwaiti women enjoy free access to various employment opportunities and, according to the statistics, constitute about 30 per cent of the Kuwaiti labour force.

51. The State has shown concern for domestic servants, for whom it has endeavoured to ensure a decent life. To this end, the State has taken a number

of measures to provide legal protection for domestic servants by, for example, establishing a domestic labour offices directorate in the Ministry of the Interior aimed at regulating the activities of offices that recruit domestic servants and providing guarantees to ensure that domestic servants enjoy their rights during and after their period of employment.

52. At the international level, the State of Kuwait has diligently endeavoured to respect the international conventions concerning human rights, particularly those relating to the elimination of racial discrimination, such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid.

PERU

[Original: Spanish]

[24 May 1996]

53. The Congress of the Republic of Peru proposed an agenda item concerning efforts to combat racial discrimination against other people.

54. The Congress of the Republic decided:

(1) To reiterate the firm intention of the representatives of the nation to condemn and combat all types of practices involving discrimination on the grounds of race, religion or nationality or on any other grounds;

(2) To renew its firm commitment to remember the suffering of the victims of those practices now living in the country and to guarantee them the same rights, and the same respect for their enriching cultures, as those recognized for other fellow citizens.

Notes

1/ See Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18 (A/48/18), sect. VIII B.